

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RIETA BOTTJER,	)	
	)	No. CV-08-091-CI
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	AND GRANTING DEFENDANT'S
MICHAEL J. ASTRUE, Commissioner	)	MOTION FOR SUMMARY JUDGMENT
of Social Security,	)	
	)	
Defendant.	)	

BEFORE THE COURT are cross-Motions for Summary Judgment (Ct. Rec. 12, 14.) Attorney Lora Lee Stover represents Rieta Bottler (Plaintiff); Special Assistant United States Attorney Franco Becia represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7.) After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment, and directs entry of judgment for Defendant.

**JURISDICTION**

Plaintiff protectively filed for disability benefits (DIB) and Supplemental Security Income (SSI) benefits in November 2001. (Tr. 67, 322.) Her 2001 claim was denied initially, and on reconsideration. Plaintiff requested a hearing before an administrative law judge (ALJ), which was held in July 2003 before ALJ R. J. Payne. (Tr. 361-425.) Plaintiff, medical expert Glen

1 Almquist, and vocational expert Fred Cutler (VE) testified. (Tr.  
2 362.) The ALJ denied benefits on July 14, 2003; the Appeals Council  
3 denied review. (Tr. 18-28, 7-9.) Plaintiff appealed the matter to  
4 this court, which reversed and remanded the case to the Defendant  
5 for additional proceedings on January 10, 2005. (Tr. 753-54.) The  
6 case was then remanded by the Appeals Council to the Spokane Office  
7 of Hearings and Appeals.<sup>1</sup> (Tr. 756-60.) While her appeal was  
8 pending, Plaintiff filed a second application for DIB and SSI  
9 benefits on November 28, 2003. (Tr. 781.) She alleges disability  
10 due to chronic back and left hip problems, left sacroiliac (SI)  
11 joint dysfunction, bowel and bladder incontinence, leg numbness, and  
12 multiple hernias. (Tr. 82, 484.) She alleges an onset date of  
13 April 30, 2001. (Tr. 82.) Her second application was denied  
14 initially and on reconsideration. (Tr. 466-67.) Plaintiff again  
15 requested a hearing before an ALJ. The two cases were consolidated  
16 and a hearing was held before ALJ Payne on September 23, 2005. (Tr.  
17 934-79.) At the September 2005 hearing, Plaintiff and medical  
18 expert Daniel Girzadas, M.D., testified. (Tr. 934.) Plaintiff was  
19 represented by counsel at both hearings. The ALJ denied benefits  
20 and the Appeals Council denied review. (Tr. 432-445, 426-28.) The  
21 instant matter is before this court pursuant to 42 U.S.C. § 405(g).

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23 <sup>1</sup> In its remand order, the Appeals Council directed the ALJ to  
24 address the opinions of Patrick Pearce, M.D., consider the  
25 assessments of state agency physicians, re-evaluate Plaintiff's RFC  
26 and past relevant work, and address transferability of skills, if  
27 appropriate. (Tr. 758-59.) As discussed in this Order, the ALJ  
28 appears to have fully complied with the remand order.

**STATEMENT OF THE CASE**

The facts of the case are set forth in detail in the transcript of proceedings, and are briefly summarized here. At the time of the September 2005 hearing, Plaintiff was 58 years old with a high school education. She also had training as a dental assistant. (Tr. 88.) She lived in a house with her caregiver. (Tr. 377, 952.) She had past work experience as an electronics assembler, electronics inspector, child care provider, certified nurse's assistant, playground monitor/teacher's aide, school cook, short order cook, dental lab technical assistant, grocery deli worker, grocery customer service clerk, grocery bagger and grocery stock clerk. (Tr. 409-13, 493.) She testified she could sit for one half hour and stand for 15 minutes. (Tr. 972.) She stated she could walk 50 feet, needed a walker for stability and also used a wheelchair. (Tr. 960.) At the 2005 hearing, she stated she could not work because of worsening hip and back pain, left arm numbness, bowel and bladder incontinence, and the effects of her medication. (Tr. 957-63.)

**ADMINISTRATIVE DECISION: MARCH 10, 2006**

At step one, ALJ Payne found Plaintiff had not engaged in substantial gainful activity during the relevant time. (Tr. 444.) At step two, he found Plaintiff had severe musculoskeletal and gastrointestinal impairments, but determined at step three they did not meet or medically equal one of the listed impairments in 20 C.F.R., Appendix 1, Subpart P, Regulations No. 4 (Listings). (Tr. 439-40.) In regards to Plaintiff's claims that she had severe incontinence, he found there was no objective medical evidence of

1 "an organic condition that would result in bowel or bladder  
2 incontinence." He determined Plaintiff did not present evidence to  
3 establish a "severe" bowel or bladder incontinence impairment. (Tr.  
4 439.) The ALJ found Plaintiff was not credible. (Tr. 441.) At  
5 step four, he determined Plaintiff had the following residual  
6 functional capacity (RFC):

7 [S]he is able to perform work that does not require  
8 lifting more than 10 pounds occasionally, standing and/or  
9 walking more than 2 hours in an 8 hour day, pushing and/or  
10 pulling more than 10 pounds occasionally, climbing  
11 ladders/ropes/scaffolds, more than occasionally climbing  
ramps/stairs, balancing, kneeling, crouching, crawling,  
stooping, and she is limited in her ability to engage in  
activities requiring exposure to vibration and fumes,  
odors, chemicals or gases.

12 (Tr. 444.)

13 Considering vocational expert testimony and the record in its  
14 entirety, the ALJ concluded Plaintiff's impairments and her RFC did  
15 not preclude Plaintiff from performing her past relevant work as an  
16 electronic assembler and electronics inspector. (Tr. 444-45.)  
17 Therefore, Plaintiff was not under a "disability" as defined by the  
18 Social Security Act. (Tr. 445.)

#### 19 STANDARD OF REVIEW

20 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
21 court set out the standard of review:

22 A district court's order upholding the Commissioner's  
23 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,  
24 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the  
Commissioner may be reversed only if it is not supported  
25 by substantial evidence or if it is based on legal error.  
*Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).  
26 Substantial evidence is defined as being more than a mere  
scintilla, but less than a preponderance. *Id.* at 1098.  
27 Put another way, substantial evidence is such relevant  
evidence as a reasonable mind might accept as adequate to  
support a conclusion. *Richardson v. Perales*, 402 U.S.  
389, 401 (1971). If the evidence is susceptible to more

1 than one rational interpretation, the court may not  
2 substitute its judgment for that of the Commissioner.  
3 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*  
4 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

5 The ALJ is responsible for determining credibility,  
6 resolving conflicts in medical testimony, and resolving  
7 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
8 Cir. 1995). The ALJ's determinations of law are reviewed  
9 *de novo*, although deference is owed to a reasonable  
10 construction of the applicable statutes. *McNatt v. Apfel*,  
11 201 F.3d 1084, 1087 (9th Cir. 2000).

### 12 SEQUENTIAL PROCESS

13 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the  
14 requirements necessary to establish disability:

15 Under the Social Security Act, individuals who are  
16 "under a disability" are eligible to receive benefits. 42  
17 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any  
18 medically determinable physical or mental impairment"  
19 which prevents one from engaging "in any substantial  
20 gainful activity" and is expected to result in death or  
21 last "for a continuous period of not less than 12 months."  
22 42 U.S.C. § 423(d)(1)(A). Such an impairment must result  
23 from "anatomical, physiological, or psychological  
24 abnormalities which are demonstrable by medically  
25 acceptable clinical and laboratory diagnostic techniques."  
26 42 U.S.C. § 423(d)(3). The Act also provides that a  
27 claimant will be eligible for benefits only if his  
28 impairments "are of such severity that he is not only  
unable to do his previous work but cannot, considering his  
age, education and work experience, engage in any other  
kind of substantial gainful work which exists in the  
national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus,  
the definition of disability consists of both medical and  
vocational components.

29 In evaluating whether a claimant suffers from a  
30 disability, an ALJ must apply a five-step sequential  
31 inquiry addressing both components of the definition,  
32 until a question is answered affirmatively or negatively  
33 in such a way that an ultimate determination can be made.  
34 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The  
35 claimant bears the burden of proving that [s]he is  
36 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.  
37 1999). This requires the presentation of "complete and  
38 detailed objective medical reports of h[is] condition from  
licensed medical professionals." *Id.* (citing 20 C.F.R. §§  
404.1512(a)-(b), 404.1513(d)).

1 It is the role of the trier of fact, not this court, to resolve  
2 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
3 supports more than one rational interpretation, the court may not  
4 substitute its judgment for that of the Commissioner. *Tackett*, 180  
5 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
6 Nevertheless, a decision supported by substantial evidence will  
7 still be set aside if the proper legal standards were not applied in  
8 weighing the evidence and making the decision. *Browner v. Secretary*  
9 *of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
10 there is substantial evidence to support the administrative  
11 findings, or if there is conflicting evidence that will support a  
12 finding of either disability or non-disability, the finding of the  
13 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
14 1230 (9<sup>th</sup> Cir. 1987).

#### 15 ISSUES

16 The question is whether the ALJ's decision is supported by  
17 substantial evidence and free of legal error. Plaintiff argues the  
18 ALJ erred when he: (1) assessed her credibility and pain complaints;  
19 (2) disregarded her primary care providers' opinions; (3) assessed  
20 her RFC; and (4) failed to properly apply the Medical-Vocational  
21 Guidelines (Grids). She asserts that the record in its entirety  
22 does not support the ALJ's denial of benefits. (Ct. Rec. 13 at 8.)

#### 23 DISCUSSION

##### 24 A. Credibility

25 When the ALJ finds a claimant's statements as to the severity  
26 of impairments, pain and limitations are not credible, the ALJ must  
27 make a credibility determination with findings sufficiently specific  
28

1 to permit the court to conclude the ALJ did not arbitrarily  
2 discredit claimant's allegations. *Thomas v. Barnhart*, 278 F.3d 947,  
3 958-959 (9<sup>th</sup> Cir. 2002); *Bunnell v. Sullivan*, 947 F.2d 341, 345-46  
4 (9<sup>th</sup> Cir. 1991) (en banc). If there is no affirmative evidence that  
5 the claimant is malingering, the ALJ must provide "clear and  
6 convincing" reasons for rejecting the claimant's allegations  
7 regarding the severity of symptoms. *Reddick v. Chater*, 157 F.3d 715,  
8 722 (9<sup>th</sup> Cir. 1998). The ALJ must engage in a two-step analysis in  
9 deciding whether to admit a claimant's subjective symptom testimony.  
10 *Smolen v. Chater*, 80 F.3d 1273, 1281 (9<sup>th</sup> Cir. 1996).

11 Under the first step, the ALJ must find the claimant has  
12 produced objective medical evidence of an underlying "impairment,"  
13 and that the impairment, or a combination of impairments, "could  
14 reasonably be expected to produce pain or other symptoms." *Cotton*  
15 *v. Bowen*, 799 F.2d 1403, 1405 (9<sup>th</sup> Cir. 1986) Once the *Cotton* test  
16 is met, the ALJ must evaluate the credibility of the claimant. In  
17 addition to ordinary techniques of credibility evaluation, the ALJ  
18 may consider the following factors when weighing the claimant's  
19 credibility: the claimant's reputation for truthfulness,  
20 inconsistencies either in her allegations of limitations or between  
21 her statements and conduct, daily activities and work record, and  
22 testimony from physicians and third parties concerning the nature,  
23 severity, and effect of the alleged symptoms. *Fair v. Bowen*, 885  
24 F.2d 597, n.5 (9<sup>th</sup> Cir. 1989); *Light v. Social Sec. Admin.*, 119 F.3d  
25 789, 792 (9<sup>th</sup> Cir. 1997). If the ALJ's credibility finding is  
26 supported by substantial evidence in the record, the court may not  
27 engage in second-guessing. See *Morgan*, 169 F.3d at 600; *Fair*, 855  
28

1 F.2d at 604 ("credibility determinations are the province of the  
2 ALJ").

3 Here, the ALJ thoroughly discussed the medical evidence and  
4 testimony presented in both claims. (Tr. 434-39.) He also  
5 summarized Plaintiff's statements of record and her testimony,  
6 specifically noting that she testified treating physician Dr. Grim  
7 suggested a walker and wanted Plaintiff to have a wheelchair; that  
8 she used the walker for weakness and pain, that she had experienced  
9 incontinence since 1996, that it is caused by stress; that she had  
10 been using diapers for the past four years; that she walks 50 feet  
11 with or without the walker, that she can lift a gallon of milk with  
12 both hands but is unable to carry it; that she is able to sit 30  
13 minutes at a time and stand 15 minutes at a time; that her  
14 medications cause problems with concentration; that physical therapy  
15 stopped in 2003 because it was making her condition worse; that she  
16 naps several times a day and has to take breaks when doing the  
17 dishes or watering the yard or after 15 minutes of activity; that  
18 sometimes pain prevents her from doing even these chores; that she  
19 has pain in her left knee and foot, but has not sought treatment for  
20 those symptoms. (Tr. 440, 955-68, 972-77.)

21 "An ALJ cannot be required to believe every allegation of  
22 disabling pain, or else disability benefits would be available for  
23 the asking, a result plainly contrary to 42 U.S.C. § 423 (d)(5)(A).  
24 . . . This holds true even where the claimant introduces medical  
25 evidence showing that he has an ailment reasonably expected to  
26 produce some pain; many medical conditions produce pain not severe  
27 enough to preclude gainful employment." *Fair*, 885 F.2d at 603.  
28



1 Subjective complaints alone cannot be the basis for a finding of  
2 disability. Further, the ALJ need not completely reject nor  
3 completely accept the claimant's allegations. *Social Security*  
4 *Ruling (SSR) 96-7p.*

5 In his credibility findings, the ALJ referenced evidence in the  
6 record that Plaintiff presented medical records from 1996 and 1998,  
7 indicating she had complained of musculoskeletal and  
8 gastrointestinal problems. The ALJ found this evidence, however,  
9 showed that by 1999, she had returned to work, completed her CNA  
10 licensing, and worked as a CNA, then as an electronics assembler  
11 until she was laid off in April 2001. (Tr. 441, 276-82.) He found  
12 imaging results in the entire record (including MRI's, CT scan of  
13 the head and colon, heart and lung imaging, and a bone scan) did not  
14 evidence a worsening of her condition, contrary to her testimony.  
15 (Tr. 437; see also Tr. 862-74, *Chart Review.*) This finding is  
16 supported by substantial evidence. For example, throughout the  
17 record, radiology reports indicate no impingement of nerves or  
18 compression to explain reported symptoms of the back and hip.  
19 Results from CT scans of the head, colon, bowels and a bone scan are  
20 unremarkable or show no significant abnormality to explain reported  
21 symptoms. (Tr. 124, 158, 199-200, 233-34, 637-50, 672-74, 691, 699-  
22 706, 860-61, 862-74; see also Tr. 938, 940-041.) This lack of  
23 objective medical evidence to establish severity of pain is a  
24 relevant factor to consider in credibility assessments, as long as  
25 it is not the only factor. *Rollins v. Massanari*, 261 F.3d 853, 857  
26 (9<sup>th</sup> Cir. 2001); *Bunnell*, 947 F.2d at 345. The ALJ properly gave  
27 additional "clear and convincing" reasons to support his credibility  
28

1 determination, including inconsistencies in her reports to third  
2 parties and in treatment notes; her self-reported ability to work  
3 until she was laid off in 2001; representations that she was able to  
4 work while receiving unemployment compensation; the fact that the  
5 record indicates Plaintiff or her physical therapist, not Dr. Grim,  
6 suggested she use a walker (Tr. 256); that Elderly Services, not Dr.  
7 Grim, suggested use of a wheelchair; and that her physicians did not  
8 refer her to a pain clinic (other than facet joint injections that  
9 provided three days of relief) despite her allegations of constant  
10 pain. The ALJ also found the reports of Dr. Lamb and Dr. Bozarth  
11 (examining neurology specialists) indicated there was no medical  
12 explanation for the severity of her complaints. This reasoning is  
13 well supported by the record. Both physicians observed Plaintiff's  
14 clinical exams were not consistent with symptoms reported. (Tr.  
15 230-31, 539, 881.) After examination and review of imaging results  
16 in January 2003, Dr. Lamb noted he was unable to explain much of  
17 Plaintiff's presentation, which he concluded was "nonphysiologic."  
18 (Tr. 539.) In May 2005, Dr. Bozarth observed Plaintiff during  
19 examination and found her lower extremity motor strength was  
20 "entirely normal." He noted she could stand and walk without a  
21 walker, moving "rather well." (Tr. 878, 880.) Finally, the ALJ  
22 cited evidence of secondary gain. (Tr. 254, 441.)

23 The enumerated inconsistencies between the medical records and  
24 Plaintiff's self-report, as well as documented observations of  
25 examining specialists, are "clear and convincing" reasons to support  
26 the ALJ's finding that Plaintiff is not credible as to the severity  
27 of her pain. *Rollins*, 261 F.3d at 856-57. Although the record  
28

1 supports the ALJ's findings that Plaintiff experienced some  
2 limitations due to her musculoskeletal and gastrointestinal  
3 impairments, the evidence in its entirety was rationally interpreted  
4 to support a finding that Plaintiff's subjective complaints of  
5 disabling pain are not credible.

6 **B. Evaluation of Medical Opinions**

7 Plaintiff claims the ALJ improperly rejected the opinions of  
8 treating physicians Patrick Pearce, M.D., and Tamara Grim, M.D.,  
9 that Plaintiff was incapable of working. She asserts that the  
10 medical expert, Daniel Girzadas, M.D., acknowledged these opinions  
11 in his testimony. (Ct. Rec. 13 at 6, 10-11.)

12 In a disability proceeding, it is the role of the ALJ to  
13 resolve conflicts in medical evidence. A treating physician's  
14 opinion is given special weight because of his or her familiarity  
15 with the claimant and his physical condition. See *Fair*, 885 F.2d  
16 at 604-05. If the treating physician's opinion is not contradicted,  
17 it can be rejected only with "clear and convincing" reasons. *Lester*  
18 *v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995). If contradicted, the  
19 ALJ may reject the opinion if he states specific, legitimate reasons  
20 that are supported by substantial evidence. See *Flaten v. Secretary*  
21 *of Health and Human Serv.*, 44 F.3d 1453, 1463 (9<sup>th</sup> Cir. 1995); *Fair*,  
22 885 F.2d at 605. Furthermore, a treating physician's opinion "on  
23 the ultimate issue of disability" must itself be credited if  
24 uncontroverted and supported by medically accepted diagnostic  
25 techniques unless it is rejected with "clear and convincing"  
26 reasons. *Holohan v. Massanari*, 246 F.3d 1195, 1202-03 (9<sup>th</sup> Cir.  
27 2001).

1 To meet this burden, the ALJ can set out a detailed and  
2 thorough summary of the facts and conflicting clinical evidence,  
3 state his interpretation of the evidence, and make findings.  
4 *Thomas*, 278 F.3d at 957; *Magallanes v. Bowen*, 881 F.2d 747, 751 (9<sup>th</sup>  
5 Cir. 1989). Further, a plaintiff's credibility is an appropriate  
6 factor to consider when evaluating medical evidence. See *Webb v.*  
7 *Barnhart*, 433 F.3d 683, 688 (9<sup>th</sup> Cir. 2005).

8 Historically, the courts have recognized conflicting medical  
9 evidence, the absence of regular medical treatment during the  
10 alleged period of disability, and the lack of medical support for  
11 doctors' reports based substantially on a claimant's subjective  
12 complaints of pain as specific, legitimate reasons for disregarding  
13 the treating physician's opinion. *Flaten*, 44 F.3d at 1463-64; *Fair*  
14 *v. Bowen*, 885 F.2d 597, 604 (9<sup>th</sup> Cir 1989). The ALJ need not accept  
15 a treating source opinion that is "brief, conclusory and  
16 inadequately supported by clinical finding." *Lingenfelter v.*  
17 *Astrue*, 504 F.3d 1028, 1044-45 (citing *Thomas v. Barnhart*, 278 F.3d  
18 947, 957 (9<sup>th</sup> Cir. 2002)). Where an ALJ determines a treating or  
19 examining physician's stated opinion is materially inconsistent with  
20 the physician's own treatment notes, legitimate grounds exist for  
21 considering the purpose for which the doctor's report was obtained  
22 and for rejecting the inconsistent, unsupported opinion. *Nguyen v.*  
23 *Chater*, 100 F.3d 1462, 1464 (9<sup>th</sup> Cir. 1996). "Although a treating  
24 physician's opinion is generally afforded the greatest weight in  
25 disability cases, it is not binding on an ALJ with respect to the  
26 existence of an impairment or the ultimate determination of  
27 disability. *Batson v. Commissioner of Soc. Sec. Admin.*, 359 F.3d

1 1190, 1195 (9<sup>th</sup> Cir. 2004) (*quoting Tonapetyan v. Halter*, 242 F.3d  
2 1144, 1149 (9<sup>th</sup> Cir. 2001)).

3 The Regulations also provide that the final determination  
4 regarding a claimant's ability to perform basic work is the sole  
5 responsibility of the Commissioner. 20 C.F.R. § 416.946; SSR 96-5p  
6 (RFC assessment is an administrative finding of fact reserved to the  
7 Commissioner). No special significance is given to a medical source  
8 opinion on issues reserved to the Commissioner. 20 C.F.R. §§  
9 404.1527(e), 416.927(e). Further, where an ALJ's determination is  
10 a rational interpretation of the evidence, the court will not  
11 substitute its judgment for that of the Commissioner. *Tackett*, 180  
12 F.3d at 1097.

13 In his detailed summary of the evidence and in his RFC  
14 assessment, ALJ Payne thoroughly discussed evidence from treating  
15 physicians Dr. Pearce and Dr. Grim. (Tr. 435-38, 442-43.) He gave  
16 specific reasons for rejecting their opinions that Plaintiff was  
17 severely limited and unable to return to work. (Tr. 541, 845-46.)  
18 Specifically, he found their opinions unpersuasive because they were  
19 based on Plaintiff's unreliable statements, were not consistent with  
20 their own clinical notes, were not consistent with the objective  
21 test results, and were not consistent with other treating physicians  
22 and examining specialists' opinions. (Tr. 442-43.) He also  
23 reasoned their opinion that Plaintiff was severely limited was not  
24 consistent with treatment recommendations; *i.e.*, Dr. Grim did not  
25 refer Plaintiff to a pain clinic to address the alleged disabling  
26 pain, and neither physician appeared to consider imaging results or  
27 reports from referred and consulting specialists. (*Id.*) As  
28

1 discussed above, the evaluations of Drs. Lamb and Bozarth, as well  
2 as treatment notes from other providers and assessments by agency  
3 reviewing physicians, contradict the opinions of Drs. Pearce and  
4 Grim that Plaintiff is not able to work; therefore, the ALJ was not  
5 obliged to consider these treating physician opinions as  
6 controlling. 20 C.F.R. §§ 404.1527 (d)(2), 416.927(d)(2); *Holohan*,  
7 246 F.3d at 1202-03.

8 Having properly rejected the opinions of Dr. Pearce and Dr.  
9 Grim that Plaintiff was unable to work, the ALJ discussed and  
10 adopted the conclusions of medical expert Daniel Girzadas. (Tr.  
11 443.) Testimony of a medical expert may serve as substantial  
12 evidence when supported by other evidence in the record. *Magallanes*,  
13 881 F.2d at 755. Here, Dr. Girzadas testified as a specialist in  
14 orthopedics and, as such, his opinions are given special weight if  
15 supported by other evidence in the record. 20 C.F.R. §  
16 416.927(d)(5). Dr. Girzadas gave detailed testimony explaining the  
17 evidence and his conclusions. (Tr. 937-51.) The functional  
18 limitations identified do not exceed limitations assessed by agency  
19 reviewing physicians, Dr. Morris Fuller and Dr. Charles Wolfe.<sup>2</sup> (Tr.  
20 572-79, 729-35, 945-46, 949.) It is noted, on independent review,  
21 that the limitations are also consistent with Dr. Pearce's  
22 observations in February 2003, that Plaintiff moved around well and  
23 had normal reflexes, (Tr. 866,) and Dr. Bozarth's observation that

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24  
25 <sup>2</sup> Agency medical and psychological reviewing consultants are  
26 experts in the evaluation of medical issues in disability claims.  
27 Their findings of fact are considered expert opinion evidence of  
28 non-examining sources by the ALJ. SSR 96-6p.

1 Plaintiff could walk without an assistive device. (Tr. 878-879.)

2 Although Dr. Girzadas testified that if Plaintiff's self-report  
3 were credible, she would be incapable of work, he opined that based  
4 on the objective medical evidence, Plaintiff should be able to do  
5 sedentary type of work. (Tr. 944, 948-49.) Specifically, he  
6 testified that "there's no evidence of any impingement of the neural  
7 elements," "no mention of any arthritic changes or inflammation of  
8 the sacroiliac joint" and "multiple sacroiliac joint x-rays which  
9 were normal." (Tr. 943-44.) As discussed above, the ALJ properly  
10 found Plaintiff's self-report was not credible. Other medical  
11 reports and treatment notes, specialist opinions, and imaging  
12 results in the record reasonably support Dr. Girzada's conclusions.  
13 The ALJ did not err in relying on Dr. Girzadas' expert testimony.

14 It is well settled that the ALJ is "responsible for determining  
15 credibility, resolving conflicts in medical testimony and for  
16 resolving ambiguities," in these proceedings. *Richardson*, 402 U.S.  
17 at 400; *Andrews*, 53 F.3d at 1039; SSR 96-8p. Here, the opinions of  
18 Dr. Pearce and Dr. Grim that Plaintiff is incapable of work are not  
19 controlling because their opinions are contradicted by other  
20 acceptable medical sources, they were properly rejected by the ALJ,  
21 and they encompass a determination reserved to the Commissioner. See  
22 SSR 96-8p; SSR 96-5p (the RFC is the adjudicator's finding based on  
23 all relevant evidence in the case record). Considering Plaintiff's  
24 impugned credibility and record in its entirety, the evidence  
25 reasonably supports the ALJ's RFC determination.

26 **C. Step Four and Step Five**

27 Having determined Plaintiff's RFC, based on limitations  
28

1 supported by the record, the ALJ proceeded to step four to determine  
2 if Plaintiff could perform past relevant work. Relying in part on  
3 VE testimony from the July 2003 hearing, the ALJ found Plaintiff  
4 could perform her past work as an electronics assembler and  
5 electronic quality control inspector. (Tr. 443-44.)

6 In finding that an individual has the capacity to perform a  
7 past relevant job, the decision must contain a finding of fact as to  
8 the individual's residual functional capacity; a finding of fact as  
9 to the physical and mental demands of the past job/occupation; and  
10 finding of fact that the individual's residual functional capacity  
11 would permit a return to his or her past job or occupation. SSR 82-  
12 62. If the claimant is able to perform her past relevant work, she  
13 is not entitled to disability benefits. *Heckler v. Campbell*, 461  
14 U.S. 458, 460 (1983). If the claimant cannot perform her past work,  
15 only then does the adjudicator proceed to the fifth and final step  
16 in the sequential evaluation. 20 C.F.R. §§ 404.1520, 416.920.<sup>3</sup>

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17  
18 <sup>3</sup> At step five, the burden shifts to the Commissioner to show  
19 the claimant can perform other substantial gainful activity. *Kail*  
20 *v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984). The Grids were  
21 adopted by the Social Security Administration (SSA) to improve the  
22 efficiency and uniformity of Social Security benefits proceedings at  
23 step five, when the Commissioner is obliged to prove there are other  
24 suitable jobs available. *Desrosiers v. Secretary of Health and*  
25 *Human Serv's*, 846 F.2d 573, 577 (9<sup>th</sup> Cir. 1988). Pursuant to  
26 rulemaking authority granted by Congress, the SSA developed a matrix  
27 of four factors (physical ability, age, education and work  
28 experience) that could be used by the Commissioner to determine



1 Here, based on VE testimony that the jobs of electronics  
2 assembler and quality control inspector as performed by Plaintiff  
3 involved sedentary exertion, the ALJ found Plaintiff's RFC permitted  
4 her to do past work as performed. Specifically, he found the past  
5 electronics jobs required lifting no more than 10 pounds, sitting  
6 six hours in an eight-hour day, and standing one hour and walking  
7 one hour in an eight-hour day. This finding is supported by  
8 Plaintiff's description of her past job duties. (Tr. 96-98, 410,  
9 444.) In his hypothetical to the VE, the ALJ also included the  
10 effects of medication and moderate pain and propounded a sit/stand  
11 option; the VE opined Plaintiff was capable of doing the assembly  
12 jobs with those limitations. (Tr. 415, 417.) Relying on this  
13 testimony, and considering the limitations supported by the expanded  
14 record, the ALJ properly found Plaintiff could perform two of her  
15 past relevant jobs. (Tr. 444.) The ALJ's step four analysis is  
16 supported by substantial evidence and is without legal error.

17 Because Plaintiff did not meet her burden at step four, the ALJ  
18 properly found her not disabled; he was not obliged to continue to  
19 step five, and there was no need to apply the Grids. Plaintiff's  
20 argument that the ALJ improperly applied the Grids is without merit.

21 \_\_\_\_\_  
22 whether work exists that a claimant can perform. This established  
23 a consistent procedure at step five for identifying other jobs that  
24 did not rely on vocational expert testimony. "Where a claimant's  
25 qualifications correspond to the job requirements identified by the  
26 rule, the guidelines direct a [step five] conclusion as to whether  
27 work exists that the claimant could perform." *See Heckler*, 461 U.S.  
28 at 461-62 (use of Grids upheld as valid).

**CONCLUSION**

The ALJ thoroughly detailed the medical evidence in the record and properly evaluated the medical opinions and other evidence in assessing Plaintiff's ability to perform work activities and past work. His detailed credibility findings are "clear and convincing." His determination of non-disability is based on substantial evidence and free of legal error. Accordingly,

**IT IS ORDERED:**

1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 12**) is **DENIED;**

2. Defendant's Motion for Summary Judgment (**Ct. Rec. 14**) is **GRANTED;**

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant, and the file shall be **CLOSED**.

DATED January 29, 2009.

S/ CYNTHIA IMBROGNO  
UNITED STATES MAGISTRATE JUDGE